

VIGNESWARA
v.
BAPAYYA.

that of *Surju Prasad Singh v. Khwahish Ali*(1), in which the suit was held to be barred. To hold otherwise would be to allow first plaintiff to get done for himself indirectly through the second plaintiff that which the Limitation Act forbids first plaintiff from doing directly.

We think, therefore, that the suit must be held to be time-barred, and on this ground we affirm the Lower Appellate Court's decree dismissing the suit, and direct the appellant to pay the respondents' costs of this appeal.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

RAMASAMI (PLAINTIFF), APPELLANT,

v.

VENKATESAM AND OTHERS (DEFENDANTS), RESPONDENTS.*

*Hindu law—Succession—Divided brothers of the full blood—Son of a reunited
half-brother.*

In 1872 a partition took place between the members of a joint Hindu family, being three brothers of the full and three of the half blood. Two of the brothers, being the sons of different mothers, subsequently reunited. The elder took the plaintiff in adoption and died during the infancy of the plaintiff. The reunited half-brother retained possession of their joint property till his death when the present suit was instituted to recover his share in the property. The two uterine brothers of the deceased resisted the plaintiff's claim :

Held, that the plaintiff was entitled to a one-third share.

SECOND APPEAL against the decree of H. G. Joseph, Acting District Judge of Ganjam, in appeal suit No. 290 of 1890, reversing the decree of P. Gopala Rau, Acting District Munsif of Chicacole, in original suit No. 350 of 1890.

The plaintiff sued to recover certain land with mesne profits, claiming to be the sole surviving member of a joint Hindu family constituted by his adoptive father and one Narayana Doss, both deceased. The adoptive father of the plaintiff was the brother of defendant No. 1 and the half-brother of defendants Nos. 2 and 3

(1) I.L.R., 4 All., 512.

* Second Appeal No. 1926 of 1891.

and of Narayana Doss. It appeared that a division had taken place in the family about 1872, after which Narayana Doss had reunited with the plaintiff's adoptive father, who predeceased him, and the property in question in the suit was the property left by Narayana Doss. The suit was defended by defendants Nos. 2 and 3 on the ground that, being divided brothers of the full blood, they were entitled in preference to the son of a reunited half-brother. The District Munsif overruled this plea, holding that defendant No. 1, as being a separated half-brother, was not entitled to share in the estate, and that the plaintiff was entitled to share equally with the other defendants. He passed a decree accordingly. On an appeal by defendants Nos. 2 and 3, the District Judge reversed his decree, holding that the plaintiff was entitled to no share. With reference to the date of the plaintiff's adoption, the District Judge recorded no finding, but the District Munsif found that it had taken place about 1877.

RAMASAMI
r.
VENKATESAM.

The plaintiff preferred this second appeal.

Pattabhirama Ayyar for appellant.

Bhashyan Ayyangar for respondents.

JUDGMENT.—One Kurmi Naidu had six sons—three by his first wife, namely, (i) Latchem, (ii) Venkatesam (first defendant) (iii) Thammi—and three by his second wife, namely, (iv) Appanna (second defendant), (v) Ramanna (third defendant) and (vi) Narayana Doss. The six brothers divided in 1872 or 1873. Plaintiff is the natural son of Latchem, and alleges that he was adopted by Thammi. His case is that Thammi and Narayana Doss reunited after the division; that Thammi died during his minority and Narayana Doss managed their joint property till his death. Plaintiff now sues for the share of Narayana Doss, on the ground that he is the only surviving member of the joint coparcenary.

The adoption was disputed, but on this point both Courts found in plaintiff's favour. The District Munsif held that plaintiff was entitled to only one-third of Narayana Doss' property on the ground that when reunion takes place among half-brothers, the divided full brothers of the deceased take equal shares with the reunited half-brother. He held that plaintiff represented the reunited half-brother, while defendants Nos. 2 and 3 were separated full brothers, and first defendant being a separated half-brother was not entitled to anything

RAMASAMI
v.
VENKATESAM.

The plaintiff accepted this decision, but defendants Nos. 2 and 3 appealed, urging that Thammi and Narayana Doss had not legally reunited, and that even if they had, the plaintiff was not entitled to any share.

The District Judge held there has been no legal reunion, but in any case the living brothers excluded the son of a deceased brother, and hence plaintiff had no claim.

It is conceded that the Judge was in error in allowing the question of reunion to be raised. It was not raised by the parties in the Court of first instance, nor was any issue taken upon it. On the contrary the defendants in their written statement admitted that on the death of Thammi his share devolved on Narayana Doss.

The question then is whether defendants Nos. 2 and 3, being divided brothers of the full blood, exclude plaintiff, who is the son of a reunited half-brother. No cases have been cited on the subject, and we must admit that, according to the ordinary principles of Mitakshara law, we should have supposed that the reunited nephew in coparcenership would have excluded the separated brother. But the texts that have been quoted show that a different view has been taken in Hindu works of authority and that separated brothers of the whole blood share equally with reunited brothers of the half blood. Reunion is possible between certain relations only, namely, with a father, brother, or paternal uncle. If a reunited brother dies leaving no male issue, and there exists a whole brother not reunited, as well as a half-brother associated with the deceased, both shall take equally. See Stokes' Hindu Law Books; Mitakshara, chapter II, section IX, 3-7. The reason is explained in Sarasvati Vilasa (Foulkes' edition page 148,) sloka 769. The rule is founded in a mixed conception. The primary idea is that reunion is a ground of preference. It furnishes the rule of decision when the surviving brothers are either of the whole or of the half blood. When there is a competition between uterine and non-uterine brothers, another idea influences the decision, namely, the superior efficacy of the funeral oblations offered by the uterine brother. That furnishes a ground of preference in his favour. If the reunited parcener is a brother of the whole blood both cases of succession concur. They conflict when there is a competition between a reunited brother of the half blood and a separated brother of the whole blood. The rule

of equal division is the outcome of the desire to give effect to both principles. See also Vyavahara Mayukha, chapter IV, section IX, verse 13, to the same effect, and Mayne, fourth edition, paragraphs 542, 543. RAMASAMI
v.
VENKATESAN.

In the present case the plaintiff was himself competent to reunite with his paternal uncle, and as Thammi's adopted son he has inherited the status and rights of his adoptive father. (Smriti Chandrika, chapter XII, 7.) The decision of the District Munsif decreeing him one-third was, therefore, right.

We must reverse the decree of the District Judge and restore that of the District Munsif. The plaintiff is entitled to his costs in this and in the Lower Appellate Court.

APPELLATE CRIMINAL.

Before Mr. Justice Mattusami Ayyar.

QUEEN-EMPRESS;

v.

HARI SHENOY AND ANOTHER.*

1893.
March 2.
July 21, 24.

*Printing Presses and Newspapers Act—Act XXV of 1867, s. 3—Name of
printer and publisher.*

A newspaper was printed and published bearing the following words:—"Printed and published at Cochin for the Malabar Economic Company at the Company's Goshree Vilasam Press":

Held, that these words did not satisfy the requirements of Act XXV of 1867, s. 3.

PETITION under Criminal Procedure Code, ss. 435 and 439, praying the High Court to revise the proceedings of R. S. Benson, Sessions Judge of South Malabar, in criminal appeals Nos. 32 and 33 of 1892, upholding the conviction of petitioners by B. M. D'Cruz, Deputy Magistrate of Cochin, in calendar case No. 22 of 1892.

The facts of this case appear sufficiently for the purposes of this report from the judgment of the Chief Justice.

This petition was preferred by the accused.

* Criminal Revision Case No. 6 of 1893.